

**UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA**

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In re:	:	Case No. 20-22898-CMB
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RONALD G. LINABURG,	:	Chapter 11
	:	
Debtor.	:	The Honorable Carlota M. Böhm
	:	Chief Judge
RONALD G. LINABURG,	:	
	:	
Movant.	:	Related Document No. ECF ## 455, 456
	:	
v.	:	Hearing Date: December 13, 2021 at 2:30
	:	p.m.
DIANA MARIE DONGELL, D.M.D.,	:	
	:	
Respondent.	:	

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**OBJECTION TO DEBTOR'S MOTION TO APPROVE  
GUARANTY OBLIGATION (ECF # 455)**

Creditor and Respondent, Diana Marie Dongell, D.M.D. (“Respondent”), by her counsel, respectfully submits this Objection to Debtor / Movant Ronald G. Linaburg’s (“Debtor”) Motion to Approve Guaranty Obligation (ECF # 455).

In support of this Objection, Respondent states the following.

1. On November 23, 2021, Debtor filed his “Motion to Approve Guaranty Obligation” requesting that the Court approve of Debtor’s request to act as the personal guarantor on a COVID-19 Economic Injury Disaster Loan (“EIDL Loan”) that Associated Dental Specialists, P.C. (“ADS”), has been approved for as the borrower from the SBA. *See* Motion at ¶¶ 5-6.

2. Debtor avers that ADS is seeking the EIDL Loan “to support its continued recovery from the pandemic and its economic impact as it continues to serve the community and its patients.” *Id.* at ¶ 5.

3. Debtor states that the SBA is requiring that a personal guaranty be executed in order to secure the loan and that “Debtor is the only individual who can personally guaranty the EIDL loan.” *Id.*

4. Respondent, in her capacity as a creditor in this case as well as a current Minority Shareholder of ADS, opposes Debtor’s Motion for the following several reasons: (a) Debtor has failed to comply with the statutory requirements for such requests; (b) Debtor’s request seeks the imposition of a post-petition lien that would take priority over existing unsecured liens; and (c) there exists a reasonable alternative signatory who currently serves as a corporate officer of ADS and who could serve as a guarantor of the EIDL Loan on ADS’s behalf.

5. Debtor’s Motion should be denied because it fails to conform to the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(A) which requires that “[a] motion for authority to obtain credit . . . shall be accompanied by a copy of the credit agreement and a proposed form of order.” Fed. R. Bankr. P. 4001(c)(1)(A).

6. Debtor failed to attach a copy of the credit agreement, the EIDL Loan, and any documentation supporting his claim that he is the only individual who is available to execute a personal guaranty for a loan to ADS from the SBA. *See Motion at ¶ 5; see also In re Lehigh Valley Prof'l Sports Clubs, Inc.*, 260 B.R. 745, 750-751 (E.D. Pa. Bankr. 2001) (explaining that a debtor must seek court approval **before** obtaining credit, especially if the lender seeks a senior lien on the bankruptcy estate) (emphasis added).

7. While Debtor does disclose in his motion certain of the proposed terms of the “proposed SBA EIDL Loan to ADS” which indicate that Debtor would be personally guaranteeing up to \$2,000,000, the actual loan documents have not been attached. *See Motion at ¶ 7.*

8. Thus, Debtor's Motion fails to conform to the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(A).

9. This leads to Respondent's second reason for objecting to Debtor's Motion. By permitting Debtor to personally guarantee a loan in the amount of 2,000,000.00, that loan would assume a priority position over Respondent's existing, unsecured Proof of Claim No. 11.

10. The requested EIDL Loan would be a post-petition, secured credit. Debtor has not first sought to obtain unsecured credit or sought court approval through notice and hearing to determine whether the existing unsecured creditors to Debtor's bankruptcy estate would be afforded adequate protection of their interests. *See generally* 11 U.S.C. § 364 (requiring that a debtor first attempt to obtain unsecured credits as well as notice and hearing to determine adequate protections where debtor seeks to obtain secured credit); *see also In re Stoney Creek Techs., LLC*, 364 B.R. 882, 890-91 (E.D. Pa. Bankr. 2007)(finding adequate protection did not exist for post-petition financing, despite equity cushion, where there was little prospect of the loan assisting the debtor in an otherwise failing business long-term even though it might provide relief in the short-term).

11. Additionally, Debtor's Motion should be denied given the history leading to the filing of Debtor's Petition in the first instance. Debtor has stated that he sought bankruptcy protection at least in part based on Debtor's previous conduct acting as a personal guarantor of debts which lead to confessed judgments against Debtor. In fact, Respondent's claims pending against ADS in state court and those recounted in her Proof of Claim are specifically based on inspections of ADS's books and records and based on Debtor's fraud and gross mismanagement in his exclusive control over the operations of ADS. (*See* Resp. to Debtor's Objection to POC, ECF # 432, ¶ 6).

12. In light of Debtor's pattern of personally guaranteeing credits that he is purportedly unable to pay, the instant motion requesting approval to personally guarantee the EIDL Loan is problematic because Creditor's ability to recover from Debtor's bankruptcy estate may be hindered or eliminated without affording any protection to her existing rights. *See Official Comm. of Unsecured Creditors of Cybergenics Corp. ex. rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) ("In Chapter 11 cases, where no trustee is appointed, § 1107(a) provides that the debtor in possession . . . enjoys the powers that would otherwise vest in the bankruptcy trustee. Along with those powers, of course, comes **the trustee's fiduciary duty to maximize the value of the bankruptcy estate.**") (emphasis added).

13. Lastly, as to Debtor's assertion that he is the only person available to personally guarantee the EIDL Loan, this is wholly unsupported. There are other corporate officers and managers of ADS who are not currently debtors in any bankruptcy proceeding who should be available to execute a personal guaranty. Indeed, John Hischar, the current corporate secretary and business manager of ADS may be available to execute a guaranty. Furthermore, Debtor has not provided any documentary support that he is the only person available who may sign a personal guaranty on behalf of ADS.

14. For these reasons, Respondent respectfully requests that the Court DENY Debtor's Motion to Approve Guaranty Obligation (ECF # 455).

WHEREFORE, Respondent and Creditor, Diana Marie Dongell, D.M.D., respectfully requests that this Honorable Court deny Debtor's Motion to Approve Guaranty Obligation (ECF # 455).

Respectfully submitted,

Dated: December 10, 2021

PORTER WRIGHT MORRIS & ARTHUR LLP

/s/ Ronald L. Hicks, Jr.

Ronald L. Hicks, Jr., Esquire  
Pa. I.D. No. 49520  
[RHicks@porterwright.com](mailto:RHicks@porterwright.com)

Carolyn B. McGee, Esquire  
Pa. I.D. No. 208815  
[CBMcGee@porterwright.com](mailto:CBMcGee@porterwright.com)

6 PPG Place, Third Floor  
Pittsburgh, PA 15222  
(412) 235-4500

*Counsel for Shareholder Creditor*  
*Diana Marie Dongell, D.M.D.*

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Debtor.	:	Related to ECF## 455, 456
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RONALD G. LINABURG,	:	
	:	
Movant,	:	
v.	:	
	:	
DIANA M. DONGELL, D.M.D.	:	
	:	
Respondent.	:	

**CERTIFICATE OF SERVICE**

I, Ronald L. Hicks, Jr., Esquire, hereby certify under penalty of perjury that on this 10th day of December, 2021, I served or caused to be served a true and correct copy of the foregoing document upon all parties in interest via the NEF generated by Court's electronic CM/ECF notification system, as follows:

Donna M. Donaher on behalf of Creditor  
First National Bank of Pennsylvania  
[donaherd@fnb-corp.com](mailto:donaherd@fnb-corp.com)

Keri P. Ebeck on behalf of Creditor  
Duquesne Light Company  
[kebeck@berNSTEINLAW.COM](mailto:kebeck@berNSTEINLAW.COM),  
[jbluemle@berNSTEINLAW.COM](mailto:jbluemle@berNSTEINLAW.COM)

Jeffrey R. Hunt on behalf of Creditor  
Municipality of Mt. Lebanon  
[jhunt@grblaw.com](mailto:jhunt@grblaw.com),  
[cnoroski@grblaw.com](mailto:cnoroski@grblaw.com)

Maria Miksich on behalf of Creditor PNC  
BANK, NATIONAL ASSOCIATION  
[mmiksich@kmllawgroup.com](mailto:mmiksich@kmllawgroup.com)

Brian Nicholas on behalf of Creditor PNC  
BANK, NATIONAL ASSOCIATION  
[bnicholas@kmllawgroup.com](mailto:bnicholas@kmllawgroup.com)

John R. O'Keefe, Jr. on behalf of Creditor  
Dollar Bank, Federal Savings Bank  
[jokeefe@metzleWIS.com](mailto:jokeefe@metzleWIS.com)

William E. Kelleher, Jr. on behalf of  
Mediator William E. Kelleher, Jr.  
[bill.kelleher@dentons.com](mailto:bill.kelleher@dentons.com),  
[michelle.graeb@dentons.com](mailto:michelle.graeb@dentons.com),  
[pg.rib.filings.us.dcg@dentons.com](mailto:pg.rib.filings.us.dcg@dentons.com)

Jodi Hause, on Behalf of the United States  
Trustee by on behalf of U.S. Trustee Office  
of the United States Trustee  
[Jodi.hause@usdoj.gov](mailto:Jodi.hause@usdoj.gov)  
[David.A.Berry@usdoj.gov](mailto:David.A.Berry@usdoj.gov)  
[Steven.W.Albright@usdoj.gov](mailto:Steven.W.Albright@usdoj.gov)

Robert O Lampl on behalf of Interested  
Party William T. Kane  
[rol@lampllaw.com](mailto:rol@lampllaw.com),  
[jschemm@lampllaw.com](mailto:jschemm@lampllaw.com);  
[jlacher@lampllaw.com](mailto:jlacher@lampllaw.com);  
[jcooney@lampllaw.com](mailto:jcooney@lampllaw.com);  
[rcooney@lampllaw.com](mailto:rcooney@lampllaw.com);  
[slampl@lampllaw.com](mailto:slampl@lampllaw.com);  
[aholmquist@lampllaw.com](mailto:aholmquist@lampllaw.com);  
[kmonahan@lampllaw.com](mailto:kmonahan@lampllaw.com)

Office of the United States Trustee  
[ustpregion03.pi.ecf@usdoj.gov](mailto:ustpregion03.pi.ecf@usdoj.gov)

Michael A. Shiner on behalf of Creditor  
Renee R. Kalp  
[mshiner@tuckerlaw.com](mailto:mshiner@tuckerlaw.com)

Michael A. Shiner on behalf of Creditor  
Rebecca L. Watkins, D.M.D.  
[mshiner@tuckerlaw.com](mailto:mshiner@tuckerlaw.com)

Michael A. Shiner on behalf of Defendant  
Rebecca L. Watkins, D.M.D.  
[mshiner@tuckerlaw.com](mailto:mshiner@tuckerlaw.com)

Michael A. Shiner on behalf of Creditor  
Ronald E. Hand, D.M.D.  
[mshiner@tuckerlaw.com](mailto:mshiner@tuckerlaw.com)

Michael A. Shiner on behalf of Defendant  
Renee R. Kalp, D.M.D.  
[mshiner@tuckerlaw.com](mailto:mshiner@tuckerlaw.com)

Maribeth Thomas on behalf of Defendant  
Rebecca L. Watkins, D.M.D.  
[mthomas@tuckerlaw.com](mailto:mthomas@tuckerlaw.com),  
[maribeth.thomas@gmail.com](mailto:maribeth.thomas@gmail.com),  
[jrusnack@tuckerlaw.com](mailto:jrusnack@tuckerlaw.com)

Michael A. Shiner on behalf of Defendant  
Ronald E. Hand, D.M.D.  
[mshiner@tuckerlaw.com](mailto:mshiner@tuckerlaw.com)

Maribeth Thomas on behalf of Defendant  
Renee R. Kalp, D.M.D.  
[mthomas@tuckerlaw.com](mailto:mthomas@tuckerlaw.com),  
[maribeth.thomas@gmail.com](mailto:maribeth.thomas@gmail.com),  
[jrusnack@tuckerlaw.com](mailto:jrusnack@tuckerlaw.com)

Maribeth Thomas on behalf of Creditor  
Rebecca L. Watkins, D.M.D.  
[mthomas@tuckerlaw.com](mailto:mthomas@tuckerlaw.com),  
[maribeth.thomas@gmail.com](mailto:maribeth.thomas@gmail.com),  
[jrusnack@tuckerlaw.com](mailto:jrusnack@tuckerlaw.com)

Maribeth Thomas on behalf of Defendant  
Ronald E. Hand, D.M.D.  
[mthomas@tuckerlaw.com](mailto:mthomas@tuckerlaw.com),  
[maribeth.thomas@gmail.com](mailto:maribeth.thomas@gmail.com),  
[jrusnack@tuckerlaw.com](mailto:jrusnack@tuckerlaw.com)

Maribeth Thomas on behalf of Creditor  
Renee R. Kalp  
[mthomas@tuckerlaw.com](mailto:mthomas@tuckerlaw.com),  
[maribeth.thomas@gmail.com](mailto:maribeth.thomas@gmail.com),  
[jrusnack@tuckerlaw.com](mailto:jrusnack@tuckerlaw.com)

Maribeth Thomas on behalf of Creditor  
Ronald E. Hand, D.M.D.  
[mthomas@tuckerlaw.com](mailto:mthomas@tuckerlaw.com),  
[maribeth.thomas@gmail.com](mailto:maribeth.thomas@gmail.com),  
[jrusnack@tuckerlaw.com](mailto:jrusnack@tuckerlaw.com)

Paul R. Yagelski on behalf of Creditor  
Reinhart FoodService, LLC  
[pryagelski@rothmangordon.com](mailto:pryagelski@rothmangordon.com)  
[jdmyers@rothmangordon.com](mailto:jdmyers@rothmangordon.com)

Brian C. Thompson on behalf of Debtor  
Ronald G Linaburg  
[bthompson@ThompsonAttorney.com](mailto:bthompson@ThompsonAttorney.com),  
[blemon@thompsonattorney.com](mailto:blemon@thompsonattorney.com);  
[bthompson@ecf.courtdrive.com](mailto:bthompson@ecf.courtdrive.com);  
[jcastello@thompsonattorney.com](mailto:jcastello@thompsonattorney.com);  
[kfinke@thompsonattorney.com](mailto:kfinke@thompsonattorney.com)

Brian C. Thompson on behalf of Plaintiff  
Ronald G Linaburg  
[bthompson@ThompsonAttorney.com](mailto:bthompson@ThompsonAttorney.com),  
[blemon@thompsonattorney.com](mailto:blemon@thompsonattorney.com);  
[bthompson@ecf.courtdrive.com](mailto:bthompson@ecf.courtdrive.com);  
[jcastello@thompsonattorney.com](mailto:jcastello@thompsonattorney.com);  
[kfinke@thompsonattorney.com](mailto:kfinke@thompsonattorney.com)

S. James Wallace on behalf of Creditor  
Peoples Natural Gas Company LLC  
[ecfpeoples@grblaw.com](mailto:ecfpeoples@grblaw.com),  
[Equitablebankruptcy@peoples-gas.com](mailto:Equitablebankruptcy@peoples-gas.com)

Also, on this 10<sup>th</sup> day of December 2021, I served or caused to be served a true and correct copy of the foregoing document via First Class U.S. Mail, postage prepaid, upon the parties identified in the attached mailing matrix (listed below), as well as the additional parties listed below:

Donna M. Donaher  
First National Bank  
One North Shore Center  
12th Federal Street  
Pittsburgh, PA 15212

Ronald G Linaburg  
924 Valleyview Road  
Pittsburgh, PA 15243-1022

Jodi Hause, on Behalf of the United States  
Trustee  
Office of the United States Trustee  
Suite 960, Liberty Center  
1001 Liberty Avenue  
Pittsburgh, PA 15222-3714

Keri P. Ebeck  
Bernstein-Burkley  
707 Grant Street Suite 2200 Gulf Tower  
Pittsburgh, PA 15219-1945

Maria Miksich  
KML Law Group, P.C.  
701 Market Street  
Suite 5000  
Philadelphia, PA 19106-1541

Robert O Lampl  
Robert O Lampl Law Office  
Benedum Trees Building  
223 Fourth Avenue, 4th Floor  
Pittsburgh, PA 15222-1713

Peoples Natural Gas Company LLC  
c/o S. James Wallace, P.C.  
845 N. Lincoln Ave.  
Pittsburgh, PA 15233-1828

Barry P. Cox  
Rivertech Tax Preparation, LLC  
26 South 27th Street  
P.O. Box 4274  
Pittsburgh, PA 15203-0274

First National Bank of Pennsylvania  
100 Federal Street  
Pittsburgh, PA 15212-5708

William T. Kane  
c/o Robert O. Lampl Law Office  
223 Fourth Avenue 4th Floor  
Pittsburgh, PA 15222-1717

Ascentium Capital  
23970 Hwy 59 North  
Kingwood, TX 77339-1535

Dollar Bank  
2700 Liberty Avenue  
Pittsburgh, PA 15222-4700

FBM Credit  
200 1st Ave  
Carnegie, PA 15106-2502

First National Bank of PA  
4140 E. State Street  
Hermitage, PA 16148-3401

Hitachi Capital America  
800 Connecticut Avenue  
Norwalk, CT 06854-1738

IRR Supply Center  
1205 W State Street  
New Castle, PA 16101-2070

Peoples Natural Gas Company LLC  
c/o S. James Wallace, P.C.  
845 N. Lincoln Ave.  
Pittsburgh, PA 15233-1828

Store Capital Acquisitions  
8377 E Hartford Drive  
Suite 100  
Scottsdale, AZ 85255-5686

Vision Financial Group  
615 Iron City Drive  
Pittsburgh, PA 15205-4321

William T. Kane  
20013 Route 19  
Cranberry Twp, PA 16066-6203

PRA Receivables Management, LLC  
P.O. Box 41021  
Norfolk, VA 23541

Raymond C. Vogliano  
Eckert Seamans Cherin & Mellot, LLC  
600 Grant Street  
44th Floor  
Pittsburgh, PA 15219

PNC Bank Retail Lending  
2730 Liberty Avenue  
Pittsburgh, PA 15222

Pennsylvania Dept. of Revenue  
Department 280946  
PO Box 280946  
Attn: Bankruptcy Division  
Harrisburg, PA 17128-0946

US Foods  
9399 West Higgins Road, Suite 600  
Rosemont, IL 60018-4940

Duquesne Light Company  
c/o Bernstein-Burkley, P.C.  
707 Grant Street, Suite 2200, Gulf Tower  
Pittsburgh, PA 15219-1945

Office of the United States Trustee  
Liberty Center  
1001 Liberty Avenue, Suite 970  
Pittsburgh, PA 15222-3721

Synchrony Bank  
c/o PRA Receivables Management, LLC  
PO Box 41021  
Norfolk, VA 23541-1021

Internal Revenue Service  
Special Procedures Division  
PO Box 628  
Bankruptcy Section  
Pittsburgh, PA 15230

Brian C. Thompson  
Thompson Law Group, P.C.  
125 Warrendale Bayne Road  
Suite 200  
Warrendale, PA 15086-6504

S. James Wallace  
GRB Law  
Frick Building, 437 Grant Street  
14<sup>th</sup> Floor  
Pittsburgh, PA 15219

Dated: December 10, 2021

PORTER WRIGHT MORRIS & ARTHUR LLP

/s/ Ronald L. Hicks, Jr.  
Ronald L. Hicks, Jr., Esquire  
Pa. I.D. No. 49520  
[RHicks@porterwright.com](mailto:RHicks@porterwright.com)

Carolyn B. McGee, Esquire  
Pa. I.D. No. 208815  
[CBMcGee@porterwright.com](mailto:CBMcGee@porterwright.com)

6 PPG Place, Third Floor  
Pittsburgh, PA 15222  
(412) 235-4500

*Counsel for Shareholder Creditor  
Diana Marie Dongell, D.M.D.*